

The opinion in support of the decision being entered today was not written for publication and is not binding Precedent of the Board.

Paper No. 21

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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Ex parte DOUGLAS T. CARSON, PAUL G. WRIGHT, and JOHN D. HULL

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Appeal No. 1998-2988  
Application No. 08/502,560

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HEARD: February 20, 2001

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Before FLEMING, DIXON, and GROSS, Administrative Patent Judges.  
GROSS, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the examiner's final rejection of claims 1 through 5, 7, and 8. Claims 6 and 9 through 17 are indicated as allowable.

Appellants' invention relates to a remote location installation apparatus for installing measuring instruments such as flowmeters in sewer pipes. Claim 1 is illustrative of the claimed invention, and it reads as follows:

1. Remote location installation apparatus, comprising:  
a mounting fixture; and

a transfer tool having a longitudinal axis;

said mounting fixture including means for fastening an object to the mounting fixture and means for fastening the mounting fixture at a remote location;

said transfer tool including means for mounting and for releasing the mounting fixture to the transfer tool in a plurality of orientations and moving the mounting fixture to said remote location;

said means for mounting and for releasing including a post extending at an angle to said longitudinal axis and a flexible means; said post and flexible means connecting said mounting fixture at a location spaced from said longitudinal axis, wherein the object may be moved and released at a distance spaced from said longitudinal axis.

The prior art reference of record relied upon by the examiner in rejecting the appealed claims is:

Montedoro-Whitney, Advertisement for QWIK-STIK (undated)

Claims 1 through 5, 7, and 8 stand rejected under 35 U.S.C. § 102(b) as anticipated by, or in the alternative, under 35 U.S.C. § 103 as being unpatentable over QWIK-STIK.

Reference is made to the Examiner's Answer (Paper No. 16, mailed January 7, 1998) for the examiner's complete reasoning in support of the rejection, and to appellants' Brief (Paper No. 15, filed December 12, 1997) for appellants' arguments thereagainst.

OPINION

We have carefully considered the claims, the applied prior art reference, and the respective positions articulated by appellants and the examiner. As a consequence of our review, we will reverse both the anticipation rejection and the obviousness rejection of claims 1 through 5, 7, and 8.

Claim 1 recites, in pertinent part, "means for mounting and for releasing the mounting fixture to the transfer tool in a plurality of orientations." In other words, the mounting fixture must be attached to the transfer tool such that the relative orientations between the two elements can vary. The examiner asserts (Answer, page 3) that the two prongs onto which the mounting band of QWIK-STIK fits "allow for mounting and releasing the fixture to the transfer tool in any orientation only limited by the degree to which the transfer tool may be angled within a manhole." However, in the drawings of the advertisement the two prongs appear to be maintained at an angle of ninety degrees with respect to the pole sections (the transfer tool), and the text adds no further description of the relative orientations of the pole and the prongs or the mounting band. It is mere speculation

to assume that QWIK-STIK allows for multiple orientations between the transfer tool and the mounting fixture.

The examiner (Answer, page 3) points to the statement in the advertisement that "installation can even be accomplished in offset manholes" as a suggestion that QWIK-STIK's fixture is mountable to the transfer tool in a plurality of orientations. Appellants respond (Brief, page 18) that adjustment for offset manholes refers to variations in length, not orientation. We agree with appellants, as the statement referenced by the examiner appears in the description of how to obtain the appropriate length for the pole, or transfer tool.

Claim 1 further requires that the object may be moved and released "at a distance spaced from said longitudinal axis" of the transfer tool. The examiner asserts (Answer, page 3) that "the posts and line [are] (operatively) connecting (to) the fixture (mounting band) at a location spaced from the longitudinal axis of the transfer tool (pole sections) as viewed [sic, in] the figures" (underlining ours). We find no figures showing any space between the posts and the longitudinal axis of the transfer tool. QWIK-STIK shows the

prongs attached to the pole along its longitudinal axis with no space therebetween. It is mere speculation to assume otherwise. Accordingly, we cannot sustain the anticipation rejection of claim 1 and its dependents, claims 2 through 5.

Claim 7, like claim 1, recites a "means for mounting the mounting fixture to the transfer tool in a plurality of orientations," which above we found lacking from QWIK-STIK. Claim 7 further requires that the flexible elongated member includes a "means for fastening one end to an installer while permitting the installer to keep both hands free and to fasten the same one end to an inanimate object near a manhole." QWIK-STIK includes a ratchet mechanism to compress and release the mounting fixture, and does not indicate that the flexible member is removable from such mechanism. The examiner contends (Answer, page 4) that "an installer may pull on the line if the ratchet is not operating." This line of reasoning again is based on speculation, in which we will not engage. Thus, we cannot sustain the anticipation rejection of claim 7 and its dependent, claim 8.

The examiner also rejects all of the claims under 35 U.S.C. § 103 as being obvious over QWIK-STIK, but adds no line

Appeal No. 1998-2988  
Application No. 08/502,560

of reasoning for obviousness. Instead the examiner relies solely upon the alleged anticipation for obviousness. Since QWIK-STIK does not anticipate the claims, and we find nothing in the record that would suggest modifying the reference to overcome the noted deficiencies, we cannot sustain the obviousness rejection of claims 1 through 5, 7, and 8.

#### CONCLUSION

Appeal No. 1998-2988  
Application No. 08/502,560

The decision of the examiner rejecting claims 1 through  
5, 7, and 8 under both 35 U.S.C. § 102(b) and 35 U.S.C. § 103  
is reversed.

REVERSED

MICHAEL R. FLEMING	)	
Administrative Patent Judge	)	
	)	
	)	
	)	
	)	BOARD OF PATENT
JOSEPH L. DIXON	)	APPEALS
Administrative Patent Judge	)	AND
	)	INTERFERENCES
	)	
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	)	
ANITA PELLMAN GROSS	)	
Administrative Patent Judge	)	

Appeal No. 1998-2988  
Application No. 08/502,560

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